



applicant's refusal to comply with a requirement for a disclaimer of the words "ORIGINAL REMEDIES," which the Examining Attorney maintains comprise a laudatory phrase which is merely descriptive of applicant's goods within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1).

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the requirement for a disclaimer.

Applicant, while acknowledging in its initial brief that some of the "materials" made of record by the Examining Attorney, through his searches of the "NEXIS" data base, "suggest that under certain circumstances and in conjunction with certain goods, the term 'remedies' may have some descriptive significance," argues that such term is not descriptive of its goods because it offers a line of *non-medicated* products which are not designed to treat bodily disorders. In consequence thereof, applicant asserts that "the term '**original remedies**' does not, with any certainty, forthwith convey an immediate idea of an ingredient, quality, characteristic, function or feature of the products in connection with which it is [to be] used." Applicant also contends that "the evidence of record is hardly supportive" of the Examining Attorney's disclaimer requirement inasmuch as none of the excerpts located in the "NEXIS" database demonstrates, as stated in its reply brief, "descriptive use of the wording 'Original Remedies' in relation to the Applicant's product[s]." Thus, at best, applicant insists that such words

are no more than suggestive of its goods and that a disclaimer thereof is not warranted.

The Examining Attorney, on the other hand, urges that it is well settled that "the word 'original' is a laudatory term," citing *In re Ervin*, 1 USPQ2d 1665 (TTAB 1986) and *General Foods Corp. v. Ralston Purina Co.*, 220 USPQ 990 (TTAB 1984). In particular, the Examining Attorney relies upon the definition he made of record from Webster's II New Riverside University Dictionary (1994), which defines "original" at 829 as an adjective meaning "1. Preceding all others in time : FIRST".<sup>2</sup> Referring to a definition from the Random House Unabridged Dictionary (2d ed. 1993), which lists "remedy" at 1629 as a noun connoting "1. something that cures or relieves a disease or bodily disorder; a healing medicine, application or treatment,"<sup>3</sup> the Examining Attorney further asserts that such term is merely descriptive of applicant's non-medicated products because such goods "are remedies for different bodily disorders."

As to applicant's criticism of the "NEXIS" excerpts which were made of record, the Examining Attorney maintains that such stories "demonstrate how the word 'remedy' is descriptive in

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<sup>2</sup> Such term is further defined, in relevant part, as signifying: "2 a. Not derived from something else <an *original* script, not a adaptation> b. Showing a marked departure from previous practice : NEW <a truly *original* design> 3. Productive of new things or new ideas : INVENTIVE".

<sup>3</sup> Inasmuch as judicial notice may properly be taken of dictionary definitions, the request in the Examining Attorney's brief that the Board consider such definition is granted. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

relation to the applicant's goods". The following excerpts, like dictionary definitions, are particularly relevant in establishing that the meaning which the trade and general public would tend to ascribe to the words "remedy" or "remedies" would include non-medicated cures for healing disorders, restoring health or treating bodily conditions (**emphasis added**):

"Though unproven, home **remedies** include shampooing with tea tree oil, available in health food stores ...." -- Sarasota Herald-Tribune, March 4, 1998;

"Clairol addresses the chronic problem of wavy, hard-to-manage hair with an assortment of Frizz Control **remedies** - Hydrating Shampoo and Taming Conditioner, High Gloss Hair Serum for shine and smoothing rough hair cuticles, Taming Balm to keep split ends at bay, Restructurizing Mousse for manageability and 'scrunching,' and Defrizz Refresher & Shiner ...." -- Plain Dealer, February 12, 1998;

"When pint-size scholars catch the pesky parasites, over-the-counter shampoos--or more natural **remedies**--will kill the [lice] problem." -- Atlanta Journal & Constitution, November 24, 1997;

Other dandruff **remedies** include Neutrogena's T/Gel Shampoo ... and Nizoral Dandruff Shampoo, which claims to be the first and only product specifically designed to target the dandruff-causing yeast ...." -- Community Pharmacy, August 1996;

"It has clerks who earnestly recommend herbal shampoos and speak reverently of natural **remedies** for everything from allergies and anxiety to aggression and arthritis." -- Arizona Daily Star, January 27, 1996;

"Others are promoting pollen pills, beeswax candles, bee lip balm and bee stings as potential **remedies** for arthritis, glaucoma and HIV." -- Austin American-Statesman, January 20, 1995;

"Other **remedies** that have been recommended include a cut onion held to the sting, spirits of ammonia, or a paste of meat tenderizer and vinegar." -- St. Louis Post-Dispatch, May 27, 1991; and

"He said he tried every home **remedy** and hand cream he could find [for dry hands and cuticles] and nothing worked for long." -- Los Angeles Times, May 30, 1990.

The Examining Attorney, in view of the above-cited case-law authority, dictionary definitions and "NEXIS" excerpts, concludes that a disclaimer of the words "ORIGINAL REMEDIES" is proper because:

The addition of the laudatory term "original" to the descriptive word "remedy" does not change the descriptive nature of [the combination thereof in] the applicant's mark. .... The wording "original remedy" serves to convey a claimed attribute, characteristic or quality of the applicant's products without the need for deliberation, imagination or forethought; its laudatory character meets the classic test for differentiating [merely] descriptive from suggestive or arbitrary terminology. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215[, 217-18] (CCPA 1978). Read together, the phrase "original remedies" conveys to potential consumers that the applicant's apothecary products were one of the first real solutions to common everyday bodily disorders.

It is well settled that a term or phrase is considered to be merely descriptive of goods or services, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, supra. It is not necessary that a

term or phrase describe all of the properties or functions of the goods or services in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term or phrase describes a significant attribute or aspect about them. Moreover, whether a term or phrase is merely descriptive is determined not in the abstract but in relation to the goods or services for which registration is sought, the context in which it is being used or is to be used in connection with those goods or services and the possible significance that the term or phrase would have to the average purchaser of the goods or services because of the manner of its use. See *In re Bright-Crest, Ltd.*, 204 USPQ 591, 593 (TTAB 1979).

Classified within the category of merely descriptive designations set forth above are those which Professor McCarthy refers to as "self-laudatory terms". As explained in 2 J. McCarthy, McCarthy on Trademarks & Unfair Competition §11.17 (4th ed. 1999) (footnotes omitted):

Marks that are merely "laudatory" and descriptive of the alleged merit of a product are also regarded as being "descriptive." This includes such terms as ... PREFERRED, DELUXE, GOLD MEDAL, BLUE RIBBON, SUPER BUY, and the like.

Since each tangible product carries with it a "psychic load" of intangible consumer psychological expectations about the product, a mark could be "descriptive" of the product itself or those intangible expectations, or both. Self-laudatory or "puffing" marks are regarded as a condensed form of describing the character or quality of the goods. ....

In the present case, we find that the phrase "ORIGINAL REMEDIES" is merely descriptive, in a laudatory sense, of the

nature, function, purpose or use of applicant's line of apothecary products. Such phrase, therefore, must be disclaimed inasmuch as it immediately conveys, without speculation or conjecture, that applicant's goods are the first or newest of their kind for relieving a bodily disorder, treating a bodily condition or restoring bodily health. We judicially notice, in this regard, that like the broader meaning shown by the "NEXIS" excerpts, Webster's New World College Dictionary (3rd ed. 1997) defines "remedy" at 1135 as a noun signifying, in relevant part, "1 any medicine or treatment that cures, heals or relieves a disease or bodily disorder or tends to restore health .... --**SYN.** CURE".<sup>4</sup> Thus, while applicant's goods, being identified as "non-medicated skin soap, hair shampoo, bath gel, skin lotion, tooth paste, foot cream, hand cream, mouth wash and shaving cream," are not necessarily cures, as contended by the Examining Attorney, for bodily disorders such as diseases, in common parlance they are nevertheless original remedies for a variety of bodily conditions. Viewed in this sense, consumers are bound to regard "ORIGINAL REMEDIES" as a laudatorily descriptive phrase which touts applicant's line of non-medicated apothecary products as the newest or first of their kind. See, e.g., In re Ervin, supra at 1666 (mark "THE ORIGINAL" for an euchre game scorer is

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<sup>4</sup> The same dictionary lists "cure" at 339 as a noun meaning, in pertinent part, "1 a healing or being healed; restoration to health or a sound condition 2 a medicine or treatment for restoring health; remedy 3 a system, method or course of treating a disease, ailment, etc." Such dictionary further indicates that "**cure** specifically suggests the elimination of disease, distress, ... etc., ... **remedy** stresses the use of medication or a specific corrective treatment in relieving disease, injury, distress, etc."

laudatory in that it merely describes "first-of-its-kind" attribute of such product); and General Foods Corp. v. Ralston Purina Co., supra at 994 (mark "ORIGINAL BLEND" for cat food is laudatory inasmuch as it "possesses nothing more than a merely descriptive significance ... that the cat food ... is the first in a line of flavor varieties and ... that this first-of-its-kind variety is a blend of flavors").

**Decision:** The requirement for a disclaimer under Section 6(a) is affirmed. Nevertheless, in accordance with Trademark Rule 2.142(g), this decision will be set aside and applicant's mark will be published for opposition if applicant, no later than thirty days from the mailing date hereof, submits an appropriate disclaimer of the words "ORIGINAL REMEDIES".<sup>5</sup>

G. D. Hohein

P. T. Hairston

C. M. Bottorff  
Administrative Trademark Judges,  
Trademark Trial and Appeal Board

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<sup>5</sup> See In re Interco Inc., 29 USPQ2d 2037, 2039 (TTAB 1993). For the proper format for a disclaimer, attention is directed to TMEP §§1213.09(a)(i) and 1213.09(b).